

Case: #26-2013

Date Filed: 29 May 2013

RECORD OF PROCEEDINGS

I, Lisa C. Morrison, assistant to the Zoning Board of Appeals of the town of Edgartown, hereby certify that the following is a detailed record of proceedings pertaining to the appeal filed by Michael Seppala and Daniel & Karen Thompson of the decision by the building inspector not to enforce the bylaw relative to the operation of a business in a residential district (Sections 4.1(d)(2) and 4.2(d) and (f), and 11.6 (a) and (b)). The property in questions is owned by Ann Cummings and is located at 8 Candlemaker Circle, Assessor's Map 11 Lots 1.335 & 1.336 in the R-60 Residential District.

1. On the 29 May 2013 the application, a true copy of which is marked "A," was presented to the Town Clerk.
2. In addition, an advertisement, a true copy of which is marked "B," was published in the Vineyard Gazette on May 31st and June 7th 2013.
3. Notice of the hearing, a copy of which is marked "C," was mailed, postage prepaid, to the petitioners; the abutters - owners of land adjacent to the subject property within 300 feet of the property lines - all as they appear on the most recent, applicable, certified tax list; and to all the proper town boards and departments.

On Wednesday, the 19th of June at 7:30 p.m. the public hearing was held in the Town Hall. The following board members were sitting for this hearing: Martin Tomassian – Chairman, Nancy Whipple, Carol Grant, and Gerret Conover – alternate.

The applicants and their attorney, Ken Lieberman, declined to proceed with a four-member board and opted to continue the hearing for a full five-member board. The hearing was rescheduled for Thursday, June 27th at 7:00 p.m.

The board reconvened on Thursday, June 27th at 7:00 p.m. The following board members were present: Martin Tomassian – Chairman, Nancy Whipple, Carol Grant, Richard Knight, and Gerret Conover – alternate. The applicants and their attorney were also present, as were Ms. Cummings and Arthur Moran.

Attorney Lieberman gave a brief history of the property. In 1993 Ann Cummings was given a permit for a horse barn, which was successfully appealed by Mr. Seppala as it was found that the lot was too small to permit the of animals. In 2006 Ms. Cummings was given a special permit by the ZBA to construct a two-car garage with an apartment above. Mr. Lieberman said that he believed that the two lots – 1.335 and 1.336 have been merged into one lot. Mr. Lieberman said that the crux of this appeal is that Mr. Moran is using the property to run an illegal welding business. He noted that Arthur Moran not listed as a resident. Mr. Lieberman said that when the building permit was issued to Ms. Cummings to expand garage the fact that it was being used as a welding business was never mentioned. He alleged that the facts were never truly presented in an attempt to circumvent the bylaw.

Mr. Lieberman said that he would not belabor the points raised in his letter of 9 April 2012 [Exhibit 1, in file] to the building inspector that Mr. Moran is not a resident owner or that the construction was not commenced within six months of the issuance of the building permit. He said that the more important issue is that Mr. Moran is running a welding business in a residential district. He said that he does not believe that this business fits the definition of a home business as outlined in the bylaw. He said that the amount of traffic generated by the business and the noise, odor, and glare from the welding equipment exceeds that for a home business. He noted that the workshop is not screened from the neighborhood.

Mr. Lieberman noted that the property currently has seven garage spaces and the horse barn is now 1744 square feet – larger than many houses in the neighborhood. He said that his clients, the Seppalas, can not rent their property. He said that, at the very least, Mr. Moran needs to apply for a special permit to operate a business in a residential neighborhood.

Michael Seppala then addressed the board. He said that he has been a teacher for 22-years and currently works as an educational consultant. He said that he needs to rent his property in order to afford to keep it. He reiterated that Mr. Moran is running a welding business from the property. He said that trucks show up at all hours and that welding is done on site and sometimes right in the street. He said that the equipment is used in an uninsulated garage so there is nothing to mitigate the noise. He noted that his bedroom is 70-feet from garage. Mr. Seppala said that the lot has been cleared of trees. He complained that the policing of this lot has been terrible. He said that the footprint of the workshop is larger than that of his house. He said that he will not be able to retire with this going on next door. He said that Mr. Moran should move his business to the airport where it belongs. He said that everyone in town is aware of what is going on and it is not acceptable. Mr. Seppala then submitted a number of photographs to showing the barn and equipment.

Karen Thompson reiterated that the garage has been turned into a welding shop. She said she can see the glare and hear the noise. She said that the business generates excess truck traffic.

Mr. Thompson said that he has complained about the noise, which takes place even on weekends and holidays.

A letter from Betsey Hughes, a part-time resident, was read. Ms. Hughes said that she supports the Seppala/Thompson appeal and does not believe that a residential neighborhood is an appropriate place for a welding business. She was concerned that the traffic may be a hazard for her four-year-old granddaughter.

Lenny Jason, Building and Zoning Inspector, then addressed the board. He said that in his opinion there is no violation of the bylaw. He said that the bylaw does not stipulate that the tradesman be an owner, just a resident of the property, which Mr. Moran is. He said he can recall at least two welding businesses that have operated in residential districts: one owned by Milton Jeffers and the other by Jim Blaine and his son. He said that he believes the business meets the definition of a permitted use under 4.1 (d)2 – use of premises by a resident tradesman.

Arthur Moran said that he used to work with Dan Thompson and they had a falling out. Mr. Moran said that he has a mobile welding business - 75 to 80 percent of his jobs are off-site. He said that he stops working by 4:30 in the afternoon. He said that Mr. Seppala recently asked him for help repairing his sail boat. He said that he never works at night. He said that he is a car buff, and works on his own cars. He said he has friends who are car buffs too and they occasionally come over. He said that his neighbors generate a lot more noise with loud parties. He reiterated that the garage is used primarily for storage for his business and for Ms. Cummings' kiln. He said that both Mr. and Mrs. Thompson work outside of their homes, so they are not even home to hear any noise that may be occurring.

Mr. Lieberman said that bylaw requires that there be no offensive noise, odor, glare, or unsightliness and that the materials used in connection with the trade be screened from the public view. He said that this business does not meet the requirements of a customary home business as outlined in 4.1 d (2) and he doubts that it could meet the requirements of 11.6. (b) – small scale business in a residential neighborhood. He said that there a clearly adverse affects on the neighborhood as a result of this business and asked the board to issue a cease and desist order.

Mr. Tomassian then closed the public portion of the hearing for discussion among the board members. He noted that it is not within the board's purview to issue a cease and desist order. The question before the board is whether or not to uphold the building inspector's decision that this use is permitted under the bylaw.

Mr. Knight said that it seems to him that the use *is* allowed under 4.1 (d) 2, however the actual commission of that use does not conform to the constraints outlined in the bylaw, as it appears that offensive noise, vibrations, glare, and unsightliness are produced. Mr. Knight said that in order for a tradesman to operate in a residential neighborhood, those conditions must be adhered to, which does not seem to be the case in this instance. Mr.

Knight said that he agrees with Mr. Jason's interpretation that it is a permitted use, but that he also agrees with Mr. Lieberman that the business is being conducted in a manner that violates zoning.

Mr. Knight said that he believes that the business is fairly new to the neighborhood. He said that a business in a residential neighborhood should not be run in a manner that is offensive to residents of the neighborhood or inhibit their quiet enjoyment of their property.

Ms. Whipple said that she visited the property and did not find it to be well-screened.

Mr. Conover said that the intensity of use did seem to be excessive for a residential neighborhood. He said that Mr. Moran could apply to the board for a special permit under 11.6, which would allow the board to place conditions on the activities to protect the neighborhood.

Mr. Knight made a motion to uphold the appeal and overturn the building inspector's decision. He said that he does not believe that the building inspector's decision was wrong - just too broad to address the current situation.

Ms. Whipple seconded the motion and also voted to uphold the appeal and overturn the building inspector's decision for the same reasons.

Ms. Grant also voted - albeit reluctantly - to support the applicants' appeal and overturn the building inspector's decision for the same reasons.

Mr. Conover voted to support the applicants' appeal and overturn the building inspector's decision for the same reasons.

Mr. Tomassian voted to uphold the building inspector's decision and deny the applicants' appeal.

Respectfully submitted,

Lisa C. Morrison, Assistant